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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL SIMPSON,

Defendant and Appellant.

F072422

(Fresno Super. Ct. No. F00655089-1)

**OPINION**

**THE COURT\***

APPEAL from an order of the Superior Court of Fresno County. Denise Lee Whitehead, Judge.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Franson, J., and Peña, J.

## **PROCEDURAL SUMMARY**

Appellant filed a petition for resentencing pursuant to the provisions of Proposition 47. (Pen. Code, § 1170.18.)<sup>1</sup> The trial court denied the petition finding that appellant was ineligible under the terms of the statute. Appellate counsel filed a brief asserting counsel could not identify any arguable issues in the case. (*People v. Wende* (1979) 25 Cal.3d 436.) We agree and affirm the trial court's order.

On July 24, 2000, an information was filed charging appellant with terrorist threats (counts 1, 2, 3, § 422); dissuading a witness by force (count 4, § 136.1, subd. (C)(1)); discharge of a firearm with gross negligence (count 5, § 246.3); possession of a firearm by a felon (count 6, former § 12021, subd. (a)(1)); possession of a firearm with a prior conviction (count 7, former § 12021.1); armed criminal action (count 8, former § 12023) and possession of a short barreled shotgun (count 9, former § 12020, subd. (a)). Several prior serious felonies and prior convictions were also alleged.

On September 27, 2000, appellant was convicted of violating section 422, criminal threats. The record provided does not reflect that appellant was found guilty on the balance of the charges. Appellant admitted having numerous prior convictions, including several sex-related offenses.

On December 22, 2014, appellant petitioned to have his conviction for violation of former section 12021, subdivision (a)(1) reduced to a misdemeanor pursuant to Proposition 47 (§ 1170.18, subs. (b) and (d).)

On April 3, 2015, the superior court denied appellant's petition on the grounds his convictions did not qualify for relief under section 1170.18, subdivisions (a) or (f). The court denied the petition with prejudice under section 1170.18, subdivisions (b) or (g).

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<sup>1</sup> All statutory references are to the Penal Code.

On September 24, 2015, appellant filed a timely notice of appeal. The notice of appeal seeks resentencing on his conviction for violation of former section 12021, subdivision (a)(1). Appellate counsel filed a brief asserting counsel could not identify any arguable issues in the case. (*People v. Wende, supra*, 25 Cal.3d 436.) The brief states that on September 27, 2000, appellant was found guilty of criminal threats. The brief does not address a conviction for violation of former section 12021, subdivision (a)(1).

By a letter dated February 22, 2016, we invited appellant to inform us of any issues he would like this court to address. In response, appellant submitted a letter brief challenging his alleged conviction for violation of former section 12021, subdivision (a)(1). He does not address his conviction for violation of section 422.

On November 4, 2014, California voters enacted Proposition 47, and it went into effect the next day. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089.) “Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*Id.* at p. 1091.)

“Proposition 47 also created a new resentencing provision: section 1170.18. Under section 1170.18, a person ‘currently serving’ a felony sentence for an offense that is now a misdemeanor under Proposition 47, may petition for a recall of that sentence and request resentencing in accordance with the statutes that were added or amended by Proposition 47. (§ 1170.18, subd. (a).)” (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.)

Neither violations for former section 12021, subdivision (a)(1) nor section 422 are among the offenses listed in section 1170.18. Thus, appellant is not eligible for relief under Proposition 47. The trial court properly denied his petition for resentencing.

We see no other arguable error that would result in a disposition more favorable to appellant.

**DISPOSITION**

The order denying appellant's petition for resentencing pursuant to Proposition 47 is affirmed.